



PLANNING COMMISSION SYNOPSIS

July 18, 2013

**CALL TO
ORDER**

Chairperson Nordstrom called the Planning Commission meeting to order at 6:02 p.m. in the McLeod Conference Room of the Bloomington Civic Plaza.

COMMISSIONERS PRESENT: Nordstrom, Willette, Oleson, Pierce, Batterson

COMMISSIONERS ABSENT: Fischer, Spiess (partial)

STAFF PRESENT: Markegard, Farnham, Schmidt, Hiller

ITEM 1

6:02 p.m.
(study item)

APPLICANT:

City of Bloomington

REQUEST:

Discuss Draft Penn American District Plan

APPLICANT REPRESENTATIVES:

Julie Farnham, Senior Planner

Jason Schmidt, Planner

Glen Markegard, Planning Manager

DISCUSSION BY THE COMMISSION:

Farnham presented a slide depicting the boundaries of the Penn American District Plan (PADP). She discussed the plan vision and highlighted key elements including: add BRT along American Boulevard, create new streets and blocks, increase development intensity, add office and hotel uses, create high quality public spaces, add residential uses, orient buildings along street, and add on-line I-35W BRT station.

Farnham identified some of the opportunities in the PADP including: new transportation investments, demand for urban lifestyle options/housing options, and redeveloping under-utilized buildings and sites with large areas devoted to surface parking (car dealerships) and aging buildings and expiring land leases. She identified there are relatively few land owners (fewer parties involved) which aides in facilitating redevelopment. Farnham noted there are opportunities for public/private partnerships typically through Bloomington HRA and city provision of public infrastructure. Farnham identified some of the challenges in the PADP including: "The Box" created by the new 494/35W interchange design— with access restrictions and increased localized traffic, district flooding and district-wide storm water management, overhead electrical power lines, market challenges, regional competition and balancing current marketws with the future vision of the district.

Farnham presented a slide depicting a potential street grid concept which promotes walkability, access, internal circulation and the complete streets concept. She identified some principles of Complete Streets including: accommodating many modes of transportation (peds/bikes/transit/cars), the use of ample sidewalks with "activity zones" and minimal building setbacks which define street edge, create ped scale and include an active ground level (windows, entrances, cafes, façade articulation) and incorporate green infrastructure and landscaping.

Farnham identified some potential pedestrian/bikes/parks public improvements including: intersection enhancements, potential bike route on Knox that will be explored in more detail with ATP update and to connect the Core Pedestrian Way on American Boulevard to the cross-town bikeway on 86th Street. She stated the proposed trail through city land needs to accommodate future expansion of reservoir thus must be located closer to eastern edge of the property. The PADP also recommends improving ped/bike connections south to Hag Park and to the west (Applewood Pointe senior housing and single-family neighborhood).

Farnham identified some water service improvements stating there are no system capacity issues in the area. She stated existing easements for water supply lines from Minneapolis must be protected and that there can be no development within the easements. She stated the City reservoir site may need to be expanded in future and the expansion will be to the east so the existing open space must be kept open for expansion.

Farnham identified some potential sanitary sewer public improvements. She stated the easterly sanitary line may need to be upgraded to accommodate 2030 projections in the future, but is ok for now. Timing will depend on amount and type of redevelopment. Farnham stated new sewer will be constructed with new/redevelopment.

Farnham presented a slide depicting flood areas based on existing conditions and the 100-year storm event. She stated some potential public improvements for flood reduction are a pipe to Upper Penn Lake and a joint project with MnDOT as part of interchange reconstruction project. She stated the district currently has a high amount of impervious surface and thus, redevelopment provides an opportunity to increase amount of pervious and improve stormwater management through the use of rain gardens and underground detention. She stated the improvements will be mostly on private property, but can also be incorporated into public street, sidewalk, trail and/or park construction.

Farnham presented a slide depicting the I-494/I-35W Interchange Reconstruction Project. She stated planning is underway to determine final design concurrent with a study of the Orange Line BRT project. Both studies are expected to be completed in spring 2014. She stated once a plan is finalized, the next steps will be to proceed to secure funding and go through the environmental review process. Farnham stated timing on the Interchange Reconstruction Project could be accelerated if Orange Line moves forward. Farnham reviewed the three potential options for the Orange Line BRT and discussed the pros and cons of the three options. She summarized the transit potential for the area noting the Red, Orange, Blue (Hiawatha) and Green (Central Corridor) lines.

Farnham presented slides of recent development around the District including Applewood Pointe, located just west of the district with 101 residential units that opened in 2010, and Genesee Apartments and retail (Phase I) that opened June 2012 with 234 rental apartments and 14,000 square feet of retail. She stated the Phase I project was well received by residential market. Farnham stated Phase II of the Penn American District will bring new development with multiple uses at the corner of Penn Avenue and American Boulevard with restaurants, retail and office. She stated the addition of a grocer adds synergy to the area and is expected to incorporate underground and surface parking. Farnham stated staff anticipates a development application soon. She stated feedback from recent sessions with residential developers is that grocery within close proximity is highly desired.

Farnham presented a slide depicting the building height limitations within the District. She explained the vast majority of the district has no building height limitations, but noted the portion of the district west of Penn Avenue does have some limitations.

Farnham summarized the proposed zoning amendments associated with the PADP. She explained the zoning changes are needed to achieve the plan vision, attract and leverage transit investments and apply

new commercial zoning developed in 2006. She stated the primary considerations include uses, intensity levels, building placement and design standards. Farnham stated the Phase I zoning amendments were completed in July 2013. Phase II will occur in 2014. She presented slides depicting zoning options and the implications of the options for selected parcels in the district including South Point Office, Knox Landing, Southtown Office Park, Chrysler Jeep, and Southtown. Farnham presented some potential zoning options based on the Knox Avenue BRT option. Nordstrom stated he believes the Chrysler Jeep site should be zoned similarly to the Luther Infinity site on the eastern edge of the current district. He explained the densest zoning should be at or near the center of the district and the outer parcels should be zoned as less dense and over time the property owners would likely initiate zoning changes to more density. Farnham explained it is likely when the PADP comes before the Commission for approval, the location of the BRT Station may not yet be known, so the recommendation may be in the format of an "if location X – then rezone to X". Batterson stated he believes the BRT Station location should be south of I-494 and closer to the Genesee development and the residential components already in place. A discussion regarding bus rapid transit ensued. Topics discussed were Orange Line service, in-line and off-line BRT service and express service. Farnham stated a major difference between BRT and Express Service is that BRT lines would run 24 hours while Express Service lines would operate at peak times only.

Farnham summarized the timetable for the PADP completion explaining the hope is to have the plan finalized by the end of 2013. She stated stakeholders meetings and open houses are to be scheduled for late summer and fall with public hearings tentatively scheduled for Planning Commission and City Council in November and December of 2013 respectively. Farnham stated related tasks are the Phase II Rezoning (first quarter 2014), amending the C-5 District Standards (2014), and study the possible expansion of the Penn American District Study Area to the east of I-35W. Farnham explained if the PADP area is requested to be expanded after the PADP is adopted, it would involve confirming desired development density, update development projections, update traffic analysis and update utility plans. Farnham stated she is available for questions and comments from the Commission.

Batterson commented the density the City is seeking for the PAD is high and the market is currently not there. He suggested more flexibility should be given to those properties to the east of I-35W since it will likely take even more time to see those parcels redevelop as it is farther removed from the center of the district. Batterson commented he thinks it is going to be difficult to build retail on 80 1/2 Street with little or no exposure to a busier street like American Boulevard. He stated he understands the emphasis on the pedestrian feel wanted along West 80 1/2 Street, but has concern that those store frontages are not visible from American Boulevard.

Nordstrom commented he has wondered why thought has been given to expanding the PAD to the East when expansion to the West makes more sense and asked for staff to comment. Nordstrom stated the access off of Penn Avenue is a natural access and could act as a gateway of the PAD. He stated I-35W is an existing break that seems like a logical place to draw a border. Farnham stated I-35W is a logical break and explained there are a number of underutilized properties on the east side of the freeway which make them ripe for redevelopment. Markegard stated the interstate is a huge barrier to the east expansion.

Oleson asked staff if the Penn/I-35W Bridge project took into consideration potential PADP increased traffic numbers. Markegard stated the Penn Bridge was not developed with PADP in mind, but was developed for a large increase in future traffic.

Batterson stated he believes the Southtown Office Park (8100 Penn) parcel has great potential for high-density residential redevelopment as it is between Genesee and Applewood, two new residential developments.

Oleson asked staff to comment on the costs associated with climate controlled pedestrian connections such as skyways. Markegard stated connections would be very cost prohibitive as the densities are not there to merit that type of connection.

Batterson asked staff to comment on the currently unused green space on the water reservoir site. Farnham stated the Utilities Division is very protective about the site, but has conceded to allow a path on the eastern side of the site, but not a "park".

Oleson asked staff to comment on how a recent variance case (side and front yard setback) where the car length standard used by Engineering staff seemed to be overlooked and Council unanimously granted the variance requests. Markegard stated there are still many types of vehicles that are at or longer than the standard length used by Engineering including extended cab pickups and some SUVs. He stated these standards are used for worst case scenarios, not for the average car length. Nordstrom commented that because of the penalties being imposed by the Federal Government, the percentage of these oversize vehicles will become less and less over time.

ITEM 2

6:03 p.m.

CASE:	10001B-13
APPLICANT:	City of Bloomington
LOCATION:	Penn American District (PAD)
REQUEST:	Adoption of the Penn American District Plan

APPLICANT REPRESENTATIVES:

Julie Farnham, Senior Planner
Glen Markegard, Planning Manager

SPEAKING FROM THE PUBLIC:

Peter Beck, representing Luther Companies
Bill Griffith, representing Kraus Anderson Realty
Greg Hayes, Luther Automotive Group
Steve Elkins, Metropolitan Council Representative

PUBLIC HEARING DISCUSSION:

Farnham explained the Penn American District is one of the key nodes with the City where redevelopment is expected to occur over the next 20-40 years. Some of the opportunities with this area include new transit investments, changing market conditions, underutilized buildings and sites, common land ownership, and public/private partnerships. Some of the challenges include freeway access changes (The Box), district flooding, overhead electrical power lines and market demand – timing. Farnham discussed the key elements of the Penn American District vision and recent redevelopment that has occurred in the district as well as the recently approved United Properties Phase II development. Farnham explained some rezoning has already been put into place that is consistent with the plan vision.

Farnham summarized the draft Penn American District Plan (PADP) highlights breaking them into two areas: public infrastructure improvements and zoning amendments. Potential public improvements include adding turn lanes and signaling to existing street and intersections and adding new streets to create a walkable grid to break up some of the larger existing blocks. As new streets are constructed, the new streets will be following the City's *complete streets* concept which provides for multiple modes of transportation where possible. Farnham explained there will be some pedestrian improvements in the district at many of the street intersections to help make the area more pedestrian friendly. A bike lane is proposed on Knox Ave. to connect the Core Pedestrian Way on American Boulevard to the cross-city bike lane on 86th Street. She explained other potential public improvements in the area including water, sewer, and storm water management, which will mostly coincide with redevelopment as it occurs.

Farnham explained the interrelationship of three major projects that will be impacting this general area: the 494/35W Interchange, the PADP and the Orange Line BRT. Metro Transit plans also identify American Boulevard as an Arterial Bus Transitway (ABRT).

Farnham summarized the proposed zoning amendments that will occur in 2014 after the PADP is adopted. The purpose of rezoning is to help achieve the plan vision, attract and leverage transit investments and apply new commercial zoning. The proposed zoning amendments help achieve the district vision by putting in place the framework to control uses, intensity levels, building placement and the design standards.

Farnham explained that some of the Penn American District (PAD) rezoning was completed a few years ago, a handful this summer and a number are proposed for early 2014. Farnham explained that most of

the PAD does not have any height limits on structures, except for the portion of the PAD west of Penn Avenue. This area of the district has maximum building height limits of 80 and 60 feet. Farnham explained there are a few residentially zoned parcels within the PAD that are not proposed for rezoning. A slide depicting the parcels remaining to be rezoned was displayed and Farnham explained the notification process and the informational meetings offered to the affected property owners. After sending notices to all landowners, the City received input from all of the affected property owners except the owners of the Jiffy Lube parcel. Farnham described the zoning proposed on each parcel through a number of slides and explained the rationale and implications of the zoning as recommended in the PADP.

Farnham explained there are a number of parcels being considered for more than one zoning classification depending upon the future location of the Orange Line BRT station. The proposed zoning classification depends primarily on proximity to the proposed BRT station. The closer to the station, the more intense the zoning district. Farnham explained the recommended zoning districts using Figures 5.6 and 5.7 from the draft PADP. Farnham displayed a slide depicting properties with auto dealership and automotive service uses that would become legally nonconforming if the proposed rezonings were to occur. Farnham discussed the rights that nonconforming uses have under State and City laws. The existing uses would be allowed to remain indefinitely and be able to repair, replace, restore, maintain and improve, but not be allowed to expand.

Farnham then displayed a slide depicting an alternative rezoning option that would zone all the car dealership parcels C-1 which would keep the auto dealerships conforming uses but does not meet the PADP vision as closely or leverage the transit investments as well as the staff recommended options. Transit funding for the Orange BRT Line is related to zoning being in place to maximize the transit investment and funding applications are scored higher where zoning and plans supporting transit oriented development are in place.

Farnham described the public outreach process for the PADP. She explained outreach included official notification, open houses, stakeholder meetings, website and media coverage, Planning Commission meetings, and City Council meetings. Farnham summarized the schedule to complete the adoption of the PADP. The schedule includes public hearings at both the Planning Commission and City Council, Comprehensive Plan text amendments, additional rezoning meetings with property owners, and the rezoning public hearings at both the Planning Commission and City Council. Time frame for the above mentioned schedule is November of 2013 to March/April of 2014.

Farnham stated staff is recommending approval of Case 10001B-13 to adopt the Penn American District Plan and she is available for questions from the Commission.

Fischer asked staff to comment on whether the plan calls for public spaces, parks or fountains within the district. Farnham stated the conceptual plan does include public and private amenities and the plan does encourage these types of amenities within the district. Farnham stated the plan does not, however, set aside any specific area for a public park.

Oleson commented that staff has done a nice job of pulling all the pieces together that have been brought before the Commission over the past few years. It is clear that collaboration between agencies/land owners/developers is going to be needed to make this plan successful. He asked staff if staff at Metro Transit (MT) seeks to work along with the City and the other agencies involved when determining these transit station sites and alternative. Farnham stated MT looks at what the City is proposing for this area as well as other factors from other agencies such as MnDOT. They look at it in terms of ridership and usability as well. Markegard stated the City has been working very closely with MT and Metro Transit very excited about the PADP land use plans. Metro Transit did submit a letter of support for adopting the PADP that was included in the materials distributed to the Commission tonight.

These types of land uses promote ridership which offers a return on investment. The Knox Avenue alignment would locate the transit station closer to where the riders would be and would better serve the area both in Richfield and in Bloomington.

Nordstrom stated the in-line 35W alignment option for the Orange Line BRT implies there would not be a transit station in Richfield. The Knox Avenue alignment proposed two transit stops, one in Bloomington and another in Richfield. Nordstrom asked staff to comment on the time horizon for a commitment on the part of the Met Council. Markegard stated the time horizon for choosing between the two alignment options is the end of 2013 and allows for work on the interchange design to continue. Nordstrom stated the cyclone design for the 35W Interchange certainly will have an effect on "The Box" and asked staff to comment on how this affects the proposed zoning for the properties within the district. Markegard stated the City sees the zoning as important to attracting transit investments in the PAD and the staff recommended rezoning will help improve the score of the Orange Line BRT federal funding proposal that will be competing with other transit proposals from across the County. He stated FTA scoring is in part determined by land use commitment for transit oriented development in the future. Markegard stated placing lower level zoning on the auto dealership parcels, which are located in close proximity the proposed transit stations, would send a negative message to the FTA and could ultimately lead to a lower score for Federal funding.

Nordstrom commented the Lexus (Infiniti) dealership located within the district was proposed to be replaced and rezoned to the C-1 district in part because of pressure from the manufacturers to upgrade the dealership showroom incorporating a larger showroom and less surface parking. He stated the C-4 district certainly offers challenges for these car dealerships to remain on their current sites. Markegard stated rezoning of property is a balancing act between the City's vision of the use of the land and the property rights of the existing land owners/users. He stated he has not heard any feedback from auto dealer land owners that they are willing or able to move their car inventories inside a building on these sites (which would be allowed under the C-5 zoning).

Willette asked staff to comment on the position stakeholders have taken regarding the PADP. Farnham stated many of the stakeholders are present and can speak for themselves if they so choose this evening. She stated, generally, most stakeholders that have uses that would become non-conforming under the proposed rezoning are not in support of the proposed zoning changes. She stated, generally, the auto dealerships on the eastern portion of the district and Southtown are in opposition to the proposed rezoning. Willette stated this is a very ambitious plan and the businesses in the district would likely welcome the increased customer base by increasing density, but would balance that with monetary outlays for rehabbing their existing buildings. Farnham added many of the stakeholders had positive comments on the vision of the PADP but had concerns regarding timing given the current economic conditions and the non-conforming status.

The public hearing was opened for public comment.

Peter Beck, stated he represents Luther Companies (Infinity, Fiat and Kia parcels). Beck identified the parcels in the district owned by Luther Companies. He explained they had a positive experience rezoning the Infinity parcel to C-1 and are in the process of requesting the Kia and Fiat dealership parcel be rezoned to C-1. He stated he is here to express the concerns they have regarding the potential rezoning of the Luther parcels to C-4 or C-5 and is not here to oppose the PADP in general. He stated his client feels very strongly that the C-1 rezoning is imperative to the businesses, but is also most consistent with the policies and goals of the plan. Rezoning the Luther properties would render the uses of the parcels non-conforming. Use non-conformity is quite different than structural or density non-conformities that may be created in other areas of the district. While it is true that an owner of a non-conforming use can repair and replace, use non-conformity can make it hard if not impossible to refinance significant improvements or investments into the property. He stated the draft PADP

acknowledges it may be decades before the eastern-most parcels within the district will be likely to redevelop. That is a long time. The proposed rezoning would knowingly make the Luther properties non-conforming in use for decades before redevelopment of the parcels would be expected to occur. That is not in the best interest of businesses that have been in these same locations for longer than the City has been incorporated. In the goals section of the PADP, the number one goal is to create stakeholder value, public and private. That goal is followed by stating the PADP seeks to create value for all Penn American stakeholders, land owners, tenant, neighbors, and taxpayers and to maintain flexibility to respond to market cycles. He urged the Commission to recommend C-1 zoning for the Luther parcels. The rezoning can occur at any time and because these parcels will not likely redevelop for decades, there is no need to create the nonconformities now. Creating non-conformities is a disincentive for investment to the manufacturers who provide the vehicles to the dealers, to financing companies, and perhaps the public. This would not create shareholder value and certainly is not flexible to market cycles. He stated they appreciate the work that has been put into the PADP and it is a good document. He stated they appreciate that staff has acknowledged the non-conformity issue, but argue rezoning to C-4/C-5 would be a disincentive to invest in the properties perhaps for the next few decades. Beck stated according to their real estate consultant, the potential for Luther to sell these properties to an office developer does not look good now or in the near future due to the market conditions.

Oleson thanked Beck for the tone and the cooperative attitude taken on behalf of the Luther Companies. He commented the pace of change is so rapid in today's culture and asked if there is talk/action in the car dealership industry of changing the business model to sell cars virtually. Beck stated there have been tremendous changes in the industry in recent years with internet sales and the amount of buyer trips decreasing to dealerships, but due to the service component and consolidation in the industry they do not expect to see dramatic changes to brick and mortar car dealerships in the near future. He stated the potential for future changes in the car dealership industry is there, but taking away the opportunity to get there on their own as the marketplace moves them by making them unable to expand and invest in themselves is a disincentive and a mistake. Oleson asked Beck to comment regarding the possibility of selling the parcels for other uses in the future. Beck stated Luther has sold some of their properties in the past for other types of redevelopment. These parcels, because of their location, are unparalleled under the current business model and are invaluable. So while it is possible the parcels could be sold and redeveloped, making the parcels non-conforming reduces that opportunity for the reasons stated before.

Griffith stated he represents Kraus Anderson Realty on behalf of the Southtown parcels. One concern of the property owner is the zoning does not yet match the market and getting from the existing land use to the district vision has to be defined. He suggested a phased approach that is flexible should be used to bridge from the current uses to the future vision. What is absent, at this time, is the market. Market value is what drives development and it will happen organically when the timing is right. Another way to drive development is to subsidize it through the use of the Port Authority. Griffith stated his client does not have a problem with the vision of the PADP, but in the details of how to achieve the vision through the use of land use controls.

Griffith explained the Southtown property was first built out in 1960 and is as old as Bloomington itself. Southtown has and is successful because, in part, the property owner has redeveloped the site over the years three times. They have worked cooperatively with City staff over these years. There are many stores and shops on the site and a plan should not be put in place that would negatively impact the many businesses and shops that serve the community. He stated the site is not just a neighborhood center, it is a regional center. Griffith noted the things that threaten the current use. One, the proposed zoning district might have minimum and maximum floor area ratios which would make many of the existing buildings non-conforming. This creates financing issues for the users. Zoning hurdles creates disincentives for users. Two, requiring two stories over 60 percent of the footprint of the site creates site characteristic non-conformities. He stated flexible zoning is wanted, not prescriptive zoning. They

would like to have discussions with the City to institute a system of controls to phase in the redevelopment of Southtown. He explained the City's vision of a grid street pattern is not feasible unless Southtown redevelops all at one time.

Griffith explained there is a great deal of lost property rights and corresponding mitigation that will need to be gone through to make the proposed Interchange Project and Knox Avenue Transit Stations become a reality. He stated he and his client are willing to sit down with staff and work through these concerns and bring forward mitigation and modification. Creating certainty for landowners helps to entice and encourage redevelopment. Redevelopment must be market driven; otherwise the City has to put much more public assistance into it.

Oleson asked Griffith to comment on the process used for a potential taking of property for a project like the Interchange Project or the Knox Avenue Transit Station Stations. Griffith stated from the property owners perspective, the property owners and authorities involved (MnDOT, Metro Transit, City of Bloomington, City of Richfield) must work together to collaboratively come to agreement to avoid some kind of significant loss that you could see in that quadrant.

Greg Hayes stated he is with the Lupient Automotive Group. He stated Lupient supports the overall PADP. He stated the C-1 Zoning District would be the preferred zoning district for their parcel. He stated the C-1 district would allow them to be flexible enough to be responsive to the car manufacturer's demands while the C-4 /C-5 zoning would put them in a position of being between a rock and a hard place.

Steve Elkins stated he represents the Metropolitan Council. He stated the Metropolitan Council has been working very closely with the City in developing the PADP. He referenced a letter to the Planning Commission from Metro Transit, a wing of the Metropolitan Council, fully supporting the PADP. The FTA looks very strongly at the underlying zoning when evaluating funding for transit projects. Elkins stated his staff believes this is the best location for new transit oriented development anywhere along the Orange Line corridor. He stated the PADP is extremely visionary and is pleased to hear the representatives of the land owners who gave testimony tonight generally agree the plan itself is visionary. Having this district plan in place will make it much easier for the region to win the Small Starts Grant (federal funding) for the Orange Line Project. The Interchange Project, once finalized, will allow the environmental review to take place which would allow for Federal Grants for highways as well.

Elkins asked for clarification from staff on whether the Commission is being asked to make a recommendation tonight on just the PADP or if they are making a recommendation on the rezoning as well. Markegard stated the PADP makes a recommendation on the rezoning direction, but the PADP does not apply any rezoning, that will come in a separate request. Farnham added that the Commission is being asked to give clear direction to staff on which rezoning option to include in the PADP. Elkins stated ultimately the zoning does have to be compatible with the plans (Comprehensive Plan and PADP). He stated you don't zone for the current use, you zone for the future use. When you don't zone for the future, you get things like the Sonic restaurant which is now failing and on a site that is completely nonviable. He reminded the Commission that just a few months ago they were being told to not rezone the Penn American phase II site to C-5 because there was no market for it and since then you have had a development application before you which will be going to Council shortly for consideration. He stated he understands Peerless Land (who opposes the C-5 zoning of their property) now has an interested party for the parcel at the southeast corner of American Boulevard and Knox Avenue. Elkins stated his staff has told him the Knox Avenue BRT Orange Line alignment is getting more and more traction as the preferred option. The operational penalty for using this alignment is very small.

The public hearing was closed via a motion.

Nordstrom asked for clarification regarding the rezoning option staff is recommending in the staff report. Markegard stated that the draft PADP before the Planning Commission recommends the rezoning options that best reflect the PADP vision and do not recommend the C-1 District for the car dealership parcels.

Oleson asked staff to comment on the statement some of the property owner representatives made regarding the need to rezone the parcels over time rather than now. Markegard stated when zoning becomes critically important is at the point of redevelopment and we don't know when that time will be. It could be within the next five to ten years. One danger of not rezoning is that redevelopment could occur that does not match the district vision and then that redevelopment may have a life span of 50 years. Oleson asked if the rezoning were to be approved and in place to C-4 or C-5, could they later be rezoned to C-1. Markegard stated, in theory, it can be rezoned at any time and would be up to the City Council in place at that time.

Nordstrom stated the Knox Avenue alignment option makes a lot of sense for a lot of reasons including the existing potential users in the areas in close proximity to the proposed stations. This option, if chosen, could be the impetus to the Interchange Project getting off the ground. Knowing how Federal funding works, this means it could be as long as a decade before the project could get implemented. This would allow time for the phasing of the parcels on the eastern edge of the district and eventually increasing the density to allow for the C-5 zoning. He stated the BMW dealership is an example of a car dealership increasing their indoor showroom and decreasing their exterior lot which may be the future of car dealerships. Nordstrom stated he believes this is the direction the industry is moving toward. The pressure from the car manufacturers and the economy may make it necessary for car dealerships to have flexibility. If the district were to build out relatively quickly, that in and of itself would put the pressure on the dealership parcels to rezone to a higher density and therefore he would be in support of approving the PADP with the zoning option allowing the dealership parcels to remain zoned C-1.

Oleson asked for clarification on the zoning option Nordstrom supported. Staff displayed the option labeled Alternative Zoning (minimize use non-conformities). Nordstrom confirmed. Farnham clarified the zoning option Nordstrom is supporting is not staff's recommendation as it does not best match the vision of the PADP. Farnham explained staff's zoning recommendations can be found on page 5.9 of the PADP and depends on the alignment of the proposed BRT station.

Oleson asked staff to clarify what property owners find problematic regarding nonconformities. Farnham stated expansion of a use, for example through an increase in the height or footprint of a building, would be defined as expansion and would not be allowed if a use nonconformity exists.

Oleson asked if it is accurate to say that having C-4/C-5 zoning in place would help federal funding for the BRT Line and the Interchange projects. Markegard stated that input from Met Council Member Elkins and from Metro Transit both confirm having zoning in place that promotes transit oriented development will allow the BRT project to score better on the grant applications and to better compete with other projects throughout the country for funding.

Oleson stated because the overall PADP has been well received by most of the property owners and because this plan does not apply rezonings to any property at this time, he supports staff's recommendation on this item.

Spiegs stated she supports staff's recommendation as well and putting in place a plan that encourages transit oriented development and helps support the proposed BRT Lines makes sense.

Nordstrom stated this item will be heard at the December 2, 2013 City Council meeting.

ACTIONS OF THE COMMISSION:

M/Spiess, S/Willette: To close the public hearing. Motion carried 5-0.

M/Oleson, S/Spiess: In Case 10001B-13, I move the Planning Commission recommend approval of the draft Penn American District Plan as attached to the staff report. Motion carried 4-1. (Nordstrom voting against)

ITEM 2

6:02 p.m.

CASE:	10000B-14
APPLICANT:	City of Bloomington
LOCATION:	N/A
REQUEST:	Discuss nonconformity definitions and standards

APPLICANT REPRESENTATIVES:

Glen Markegard, Planning Manager
Elizabeth Lazzara, Planner

DISCUSSION:

Markegard acknowledged to the Commissioners that Peter Beck, an attorney representing Luther Companies, had requested his letter to the Planning Commission dated January 7, 2014 be distributed to the Commission again. Markegard indicated the letter had been distributed and was in front of the Commissioners.

Markegard explained that at the January 9 Planning Commission meeting the Commission directed staff to continue a portion of the proposed City Code amendments for further discussion regarding relocation of nonconformities and intensification of nonconformities to a Planning Commission study meeting. Subsequently, at the January 27 City Council public hearing, the City Council requested that staff bring back a study item on the following nonconformity issues: relocation, intensification, changes within the four walls of a structure (should one nonconforming use be allowed to expand into or replace another nonconforming use), and general exception processes.

Markegard stated the primary impetus for the discussion was that planned rezoning would make certain uses legally nonconforming. He stated there are competing objectives when regulating nonconformities: on the one hand achieving conformance with City standards and on the other hand preserving property rights.

Markegard explained the history of the Bloomington Nonconformity Ordinance stating the ordinance was amended in 2008 due to changes made in 2006 to Minnesota law. He explained that prior to 2008 the City Code prohibited nonconforming uses to enlarge, alter, move, with termination of use upon one year of non-use, and termination of use if more than 50 percent destroyed. When staff amended the Code in 2008 to comply with the changes made to state law in 2006, the Code incorporated the state law changes. The new law highlights were that any nonconformity may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless the use was discontinued for a period of more than one year and if the use was destroyed by fire or other peril, must apply for a building permit to replace within 180 days. The law also stated a municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety.

Markegard explained there are four types of nonconformity: use, lot, structure, and site characteristics. He showed slides demonstrating Bloomington examples of each of the type of nonconformity.

Markegard explained the next steps would be to obtain the Planning Commission's input on the four items: relocation, intensification, changes within the four walls of a structure, and general exception processes, and present the input to the City Council at a study meeting (March 3). After direction from

Council, public hearings for Planning Commission and City Council will be scheduled to consider the amended draft ordinance.

Nordstrom asked for clarification from staff where the Legislature does not define terms in law (i.e. expansion), how is it determined? Markegard stated the courts will typically go to the plain meaning of a term such as found in a dictionary definition; or they may also look to case law.

Spiess asked staff if zoning can be tied to a specific date. Markegard stated it can, but the risk is that redevelopment may occur in the short term that matches the old zoning but not the new vision.

Fischer stated he believes it is good to have a balance of land uses in a community.

Nordstrom stated the proposed City Code language would make it virtually impossible to relocate a nonconforming use on the same site. Markegard reiterated it goes back to what constitutes expansion with regard to relocation in our definitions.

Batterson stated he struggles with regard to regulating intensification within four walls (i.e. the number of employees, hours of operation, number of service bays). He stated he believes relocating on the same lot is not an expansion, and that property owners should be able to make improvements. Markegard reiterated improvements are permitted under state law and the proposed City Code.

Markegard posed the following questions for discussion to obtain input by the Commissioners.

Relocation of Nonconforming Uses:

➤ **Should nonconforming uses be able to relocate on a site?**

Goodrum: Wants to see businesses succeed. Maybe allow some improvement, especially if footprint of building is not being changed, but does not want to prolong the nonconformity in perpetuity.

Maybe a small percentage adjustment would be ok.

Bennett: Basically same view as Goodrum.

Fischer: Similar view to both Goodrum and Bennett.

Willette: Market forces sometimes drive the changes. Property owners will need flexibility to cope.

Nordstrom: Leaning to a more liberal definition of the state statute, especially with buildings as long as the ability to restore, replace, maintain or improvements would be allowed. Expressed interest in district wide provisions.

Expansion of Nonconforming Lots, Structures, and Site Characteristics:

➤ **Should nonconforming lots, structures and site characteristics be allowed to expand?**

Batterson: Nonconforming lots should not be able to expand.

Spiess: Nonconforming structures should be handled the same way.

Intensification of Nonconforming Uses**➤ Should nonconforming uses be able to intensify? Should intensification be defined?**

Nordstrom: The Minnetonka Ordinance example goes too far.

Spiess: Would like to allow some use intensification so long as there are measures to address the level of intensification.

Nordstrom: If we define intensification in our City Code, we should be consistent with the use of the term everywhere within the Code (i.e. – parking).

Batterson: Supports defining intensification as much as possible, possibly with a CUP exception process, but not a variance.

Goodrum: We should define intensification to clarify what is meant. Would like to give property owners flexibility with a process to allow some increase in intensity.

Fischer: Would like to allow some flexibility so property owners will maintain their property.

Expansion/Replacement of Nonconforming Uses**➤ Should one nonconforming use be allowed to expand as long as it replaces another nonconforming use on the same site? Within the same building?**

Nordstrom: Each use nonconformity should be evaluated individually and not be allowed to expand via replacement.

Fischer: Does not like the cap and trade approach. Replacement should not be allowed.

Spiess: Replacement should not be allowed.

Batterson: Less concerned about replacement. Replacement should be allowed.

Bennett: If the purpose is for nonconformities to move toward conformity, replacement should not be allowed.

Goodrum: Replacements should not be allowed.

Nordstrom: Within the same walls a nonconforming use should be allowed to shift functions.

Batterson: Improvement should be allowed within the same building.

Fischer: Does not like the idea of swapping in reference to replacement of a use.

Batterson: Commented there are many different kinds of nonconforming uses and that not all nonconforming uses are undesirable.

Nordstrom: We should just follow state statute.

Goodrum: Property owners should be able re-arrange uses inside an existing structure. Is comfortable with staff creating a definition for both expansion and replacement.

Flexibility Measures/Exception Process of Nonconforming Uses**➤ Should an exception process be allowed? Bloomington currently allows expansion of two nonconforming uses in one zoning district through issuance of a Conditional Use Permit. Should every nonconforming use in every zoning district be allowed to expand through an exception process?**

Nordstrom: Should not be permitted.

Fischer: Supports expansion with an expansion process. Allow some flexibility for realities of operating businesses.

Batterson: Would support testing out exception/expansion notion in specific districts (such as Penn American) before considering it city-wide. Sees this issue differently depending on if the use is an auto dealership versus an auto repair shop. Consider exceptions district by district and use by use.

Goodrum: Likes the idea of some expansion. Maybe a percentage not to exceed a certain amount (i.e. - 10%), to moderate impacts and tied to the building structure. Some exception process may be necessary to implement.

Batterson: Hopes the City Council will look at some type of deferred zoning in addition to nonconformity mechanisms. Idea should be to not penalize businesses as we work toward the future vision.

APPROVAL OF SYNOPSES

None.

The meeting adjourned at 8:12 p.m.

Prepared By: MH Reviewed By: EL, GM

Approved By Planning Commission: 3/6/14

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ITEM 3

6:43 p.m.
(study item)

CASE:	N/A
APPLICANT:	City of Bloomington
LOCATION:	N/A
REQUEST:	Discuss potential amendments to Mixed Use Districts and Parking Standards (study item)

APPLICANT REPRESENTATIVE:

Julie Farnham, Senior Planner

STAFF PRESENTATION:

Farnham stated the proposed amendments attempt to respond to some of the characteristics inherent to a suburban environment and the challenges of transforming an intact suburban development pattern to a more urban, pedestrian-oriented pattern. These amendments were included in the 2014 Planning Commission work plan as "C-5 Amendments". For expedience, this task has been broadened to include other mixed use districts as well (LX, B-4, C-4, C-3 and HX-R).

Farnham explained the discussion on this item is limited to potential changes in the Mixed Use Districts and the Parking Standards and is not to include the topics covered in the nonconformity definitions and standards item which has been discussed previously with the Commission. Farnham presented a series of slides identifying the impetus for the proposed changes, including: responding to challenges of suburban setting, allowing appropriate flexibility, and minimizing the need for code deviations.

Farnham presented a slide explaining what the City wants to achieve: pedestrian scale and walkability; urban character; street enclosure and well defined intersection corners; minimizing the impact of cars; and creating "active" streetscapes.

Farnham presented a slide of common suburban characteristics and challenges that make urban style development more difficult including: multiple street frontages, ample street setbacks, parking located in front of building/entry, one customer entrance (facing parking), and no alleys for delivery and loading docks.

Farnham explained that the over the past few years, the City's new commercial zoning district standards pertaining to the creation of mixed use, pedestrian-oriented development have been tested on several projects developed or proposed in the South Loop and Penn American Districts as well as near France Avenue and Old Shakopee Road. Many of these projects requested, and received, flexibility on multiple building, site, and parking standards. These projects provided an opportunity to see how these new standards worked in "real world" applications.

Farnham presented an overview of the proposed modifications to various design standards related to buildings, site design, and parking in the mixed use zoning districts including: a summary description of the intent of the various standards, current requirements, and proposed modifications; an excerpt from City Code Section 21.201.02(e), a table of setbacks in commercial and industrial zoning districts, with proposed changes highlighted (see staff report for details).

Farnham stated the next steps include a study meeting with the City Council scheduled for April 21, 2014 to obtain their input on the proposed modifications. Staff will then prepare a draft ordinance incorporating the various mixed use standards amendments and the proposed nonconformity standards for consideration at a future public hearing.

Farnham stated she is available for comments and input from the Commission.

COMMENTS AND INPUT OF THE COMMISSION:

Fischer asked staff to comment on the confusion that may occur when allowing developers and property owners to choose the primary and secondary elevations of proposed buildings and how that may be counter intuitive to the goals of a pedestrian oriented development. Farnham explained that the proposed amendments allow flexibility with regard to door placement on the structures and give the City more say on which facades are designated as primary and secondary, which ensures the pedestrian oriented façade meets higher standards and also allows flexibility for the developer on placement of entrances.

Goodrum commented that he supports the proposed amendments and likes the changes which give the developer more flexibility while still meeting the intent of the Code. He suggested staff define the term "activation" within the suggested modifications.

Spiegs stated she echoes the comments voiced by Goodrum. She stated she supports allowing flexibility to developers and land owners that allow attractive buildings and at the same time creates building standards that meet the City's objectives. She stated she appreciates how well staff keeps the Planning Commission informed of proposed changes to the Code.

Batterson stated one of the biggest challenges the Planning Commission has had while reviewing the Penn American District grocery store and hotel was the developers designating the primary and secondary facades of the buildings. He stated the hotel decided to face American Boulevard, while the grocery turned their primary elevation inwards to 80 ½ Street. The City desires to have all buildings face the Pedestrian Street of 80 ½ Street which is the least visible for users approaching this development by car. He stated what we are doing in some of these new developments to make them appear more urban is to turn our backs to the surrounding main streets from which users will be entering (Penn and Knox Avenue at Penn American District and 24th Avenue in the case of the hotel/office development). He stated he thinks it is wise to get the façade designation out of the hands of the developer and into the hands of the City, but is concerned developments will turn their backs to the busier streets. The Penn American District is problematic because it turns its back on Penn Avenue and does not welcome drivers in when they drive by at thirty miles an hour. Some of this urbanism we are creating in our Code is missing that point. We are a community that developed around the car, we can try to minimize that, but drivers need to be enticed to drive in, stop, and walk around. If we turn our back, which is what we have been doing, we are never going to get there. He stated he supports the proposed changes regarding placements of doors. He stated Minneapolis has ordinances regarding percentage of façade for windows and that there are ways to be creative with window treatment (tinting, use of architectural features, brick, etc.) that can be used to create attractive facades. He stated these Mixed Use Districts are special areas where the City is spending money for infrastructure and must have high standards for design to ensure the buildings are special and stand out for the next 10-20 years into the future and longer.

Willette stated he supports parking standard flexibility and the proposed changes will help allow for flexibility when it may be needed.

Nordstrom (in regards to Batterson's Penn American comments) commented that parcel size at the Penn American District may have played a part in some of the flexibility measures granted there. He asked staff to comment on the challenges the South Loop District will face with the large size of the lots and the grid pattern of streets that exist there and will the proposed flexibility give the Commission and Staff the tools needed to create a path for that flexibility. Farnham stated it is the intent in South Loop District to break up the larger blocks to create a smaller street grid pattern and to encourage a more

pedestrian-friendly street environment. The key pedestrian street in South Loop is Lindau Lane and the intent is to have development face toward Lindau Lane. She stated Staff does recognize that commercial structured parking is expensive and may not be feasible until land values go up enough to make structured parking an option. Nordstrom asked staff to compare the developments at Penn Avenue/American Boulevard and Lindau Lane in South Loop and whether they should face inward or outward. Farnham stated Staff is aware and agrees with Commissioner Batterson's comments about not wanting buildings "turning their backs" toward major streets. The proposed changes focus on enhancing the pedestrian oriented areas. The design features should be focused on the area the pedestrians are going to be. The proposed Code does not say the façade facing a street does not have standards, but rather states that higher standards are required on facades that face the pedestrian oriented side (i.e. primary facade).

Nordstrom asked staff to comment on whether a street, over time, may change from an auto-oriented street to a pedestrian –oriented street (American Boulevard as an example). Farnham stated she believes American Boulevard will always remain a major arterial as it acts as a reliever to I-494.

Markegard stated the next step for the Planning Commission would be a public hearing on the proposed amendments which will be at a later date after staff has had time to prepare a draft ordinance incorporating comments from the Commission and Council.

APPROVAL OF SYNOPSES

M/Spiess, S/Goodrum: I move the Planning Commission approve the synopsis of the March 6, 2014 Planning Commission meeting as presented. Motion carried 6-0. (all present)

M/Spiess, S/Goodrum: I move the Planning Commission approve the synopsis of the March 20, 2014 Planning Commission meeting as presented. Motion carried 5-0. (Fischer not voting due to absence at that meeting)

The meeting adjourned at 7:26 p.m.

Prepared By: MH Reviewed By: GM, JF

Approved By Planning Commission: 5/8/14

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